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**IN THE  
COURT OF APPEALS OF INDIANA**

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LEE ANN HUGHES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 10A04-0802-CR-45
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE CLARK SUPERIOR COURT  
The Honorable Cecile A. Blau, Judge  
Cause No. 10D02-0601-FD-21  
10D02-0508-FD-498  
10D02-0309-FD-470

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**August 12, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Lee Ann Hughes appeals the twenty-three and a half year sentence imposed for the revocation of her probation for Class A misdemeanor conversion and her convictions for Class D felony theft and fifteen counts of Class D felony obtaining a legend drug by fraud. We reverse and remand.

## **Issue**

Hughes raises one issue, which we restate as whether she was properly sentenced.

## **Facts**

On August 11, 2004, Hughes pled guilty to one count of Class A misdemeanor criminal conversion, and the trial court sentenced her to one year suspended on probation. On July 7, 2005, the State charged Hughes with one count of Class D felony theft. On August 10, 2005, the State charged Hughes with fifteen counts of Class D felony obtaining a legend drug by fraud.

On January 25, 2006, Hughes admitted to the probation violation and pled guilty to theft and fourteen counts of obtaining a legend drug by fraud. As for the remaining fraud count, the charging information for count XIV referred to Estradiol. At the guilty plea hearing, Hughes indicated she had a valid prescription for Estradiol, the State moved to dismiss that count, and the trial court granted the State's motion to dismiss count XIV. See Tr. pp. 18-20.

Prior to entering convictions on Hughes's guilty pleas, she enrolled in a drug court program. In July 2007, Hughes was terminated from the drug court program because of her noncompliance with the terms of the program.

On November 8, 2007, the trial court held a sentencing hearing at which it entered judgments of conviction on the theft charge and the fifteen fraud charges.<sup>1</sup> The trial court ordered Hughes to serve the remainder of her one year sentence for the conversion conviction. The trial court sentenced Hughes to the advisory sentence of one and half years on each of the fifteen fraud convictions, with one year suspended on each count. The trial court ordered the fifteen sentences to be served consecutively. Regarding the theft conviction, the trial court sentenced Hughes to one and a half years suspended and ordered the sentence to run concurrent with the fraud sentence. For the fraud and theft convictions, Hughes was sentenced to a total twenty-two and a half years, seven and a half years of which were executed. The trial court ordered the fraud and theft sentences to be served consecutive to the sentence on the conversion conviction for a total sentence of twenty-three and half years, with a total eight and half years executed. Hughes now appeals.

### **Analysis**

Hughes argues that the trial court abused its discretion<sup>2</sup> in sentencing her and that her sentence is inappropriate. We need not address the abuse of discretion argument because we conclude Hughes's twenty-three and a half year sentence is inappropriate.

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<sup>1</sup> Neither party raised the issue of the dismissal of count XIV.

<sup>2</sup> Hughes explains that only one of the legend drug offenses occurred before the change in the sentencing scheme from presumptive to advisory sentence and advocates that we review her sentence under the advisory scheme. Because we revise Hughes's sentence pursuant to Indiana Appellate Rule 7(B), we need not address this issue.

Indiana Appellate Rule 7(B) permits us to revise a sentence that is inappropriate in light of the nature of the offense and the character of the offender. Although Indiana Appellate Rule 7(B) does not require us to be “extremely” deferential to a trial court’s sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id. Hughes has met this burden.

As an initial matter, we note that Hughes pled guilty to fourteen of the fifteen fraud counts because the State moved to dismiss count XIV and the trial court granted the State’s motion. Accordingly, Hughes cannot be convicted of or sentenced on count XIV. Thus, only fourteen fraud convictions remain.

In considering the nature of the offense and Hughes’s character, we do not conclude that consecutive sentences are warranted. Hughes admits that all of the offenses were committed as a result of her addiction to prescription pain medicine that was prescribed after thyroid cancer surgery. Within a relatively short period of time, Hughes’s father was diagnosed with cancer and died, her mother was diagnosed with cancer, and she was diagnosed with cancer. It was during this time that she became addicted to the pain medicine. Further, Hughes committed the fourteen fraud offenses during a period of approximately four months. Countering the cause of her addiction, though, is the impact that her addiction and crimes had on her family. Hughes and her

husband lost their home and car and had to declare bankruptcy. At one point the two of them were living with their adult son.

Although the consequences of the offenses are troublesome, Hughes's character is significantly more positive than that of the typical offender. At the time of sentencing, Hughes was forty-nine years old. Although she was on probation for the misdemeanor conversion conviction when she committed the theft and fraud offenses, she has no criminal history other than these offenses. Prior to her commission of the offenses, she was a nurse, and she voluntarily relinquished her license because of her addiction. Although Hughes did not successfully complete the drug court program, she accepted responsibility and pled guilty to the offenses in an "open plea." Without the benefit of any bargain from the State, Hughes admitted to committing the felony offenses. Even the State acknowledged Hughes's acceptance of responsibility at the sentencing hearing. See Tr. p. 93. Hughes's failure to complete the drug court program warrants the entry of conviction, but it is not a basis for the imposition of consecutive sentences on each of the fraud counts.

Given the nature of the offense and the character of the offender, we conclude that Hughes's twenty-two and a half year sentence is inappropriate. Specifically, we are not convinced that consecutive sentences are warranted for all fourteen fraud counts. See Monroe v. State, No. 37S03-0805-CR-294, slip op. at 4 (Ind. May 23, 2008) ("The nature and circumstances of Monroe's crimes coupled with his position of trust with the victim is sufficiently aggravating to warrant enhanced sentences. However, we discern nothing to justify consecutive sentences.").

We revise Hughes's sentence to an advisory term of one and a half years executed on each of the fraud counts. Two of the sentences are to run consecutively, and the remaining twelve sentences are to run concurrently, for an aggregate sentence of three years executed on the fraud convictions. We order limited consecutive sentences because of the sheer number of offenses committed by Hughes. Regarding the theft conviction, we revise Hughes's sentence to one and a half years suspended on probation and order it to be served consecutive to the fraud sentence. Thus, we revise Hughes's sentence on the Class D felonies to a total sentence of four and a half years.<sup>3</sup>

### **Conclusion**

The trial court improperly entered a conviction and sentenced Hughes on count XIV because the count was dismissed at the guilty plea hearing. Given the nature of the offense and the character of the offender, Hughes's twenty-two and a half year sentence for the Class D felonies is inappropriate and should be revised to four and a half years—three years executed for the fraud convictions and one and a half years suspended on probation for the theft conviction. We reverse and remand for the imposition of sentence consistent with this opinion.

Reversed and remanded.

CRONE, J., and BRADFORD, J., concur.

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<sup>3</sup> Hughes's sentence, including the probation revocation, will be five and half years, with four years executed and one and a half years suspended on probation.